

Maine Forest Products Council, March 20, 2012
Proposed new sub-chapter to create performance standards for surface
exploration for metallic minerals

§. ____ Definitions

Definitions in this sub-Chapter have the same definitions as used in §490-W unless otherwise indicated. Unless context otherwise indicates, the following terms have the following meanings.

1. Surface exploration for metallic minerals. “Surface exploration for metallic minerals” means drilling boreholes and extracting rock samples or digging test pits or test trenches for the purpose of observing soil and rock and taking samples of soil and rock. It does not include exploration through the use of shafts or tunnels that extend out beneath the surface of the earth.

§. ____ Applicability

This article applies to surface exploration for metallic mining and supersedes any requirements included in department regulations affecting metallic mineral exploration.

A person with a valid permit for a metallic mineral exploration under §349-A must conduct exploration in compliance with the terms and conditions of that permit. Any modification of the permit must be in conformance with §349-A. A person with a permit under §349-A may file a notice of intent to comply with this article. The permit issued under §349-A lapses as of the date a complete notice of intent is filed with the department. If the permittee chooses to substitute a notification pursuant to this article, all terms and conditions that applied to the permit issued pursuant to §349-A are incorporated into the notification approved pursuant to this article.

§. ____ Notice of intent to comply

A person intending to explore for metallic minerals using surface methods under this article must file a notice of intent to comply. A notice filed under this section must be complete, submitted on forms approved by the department and mailed to the municipality where the exploration is located, the department, the Maine Historic Preservation Commission and each abutting property owner. The notice that is mailed to the municipality and each abutting property owner must be sent by certified mail at least 7 days before the notice of intent to comply is filed with the regulator. The notice that is mailed to the department must be sent by certified mail, return receipt requested. Upon receiving the postal receipt, the owner or operator may commence surface exploration. The municipality where the proposed exploration is located may submit comments to the department if the proposed exploration may pose an unreasonable adverse impact under the standards in § _____. Within 30 days of receipt of the notice of intent to comply, the department shall respond to the comments made by the municipality. Abutting property

owners, the Maine Historic Preservation Commission or other interested persons may submit comments directly to the department.

A notice of intent to comply is not complete unless it includes the following:

1. Name, address and telephone number. The name, mailing address and telephone number of the owner of the land on which the exploration will take place and, if different from the owner, the person undertaking the exploration;

2. Map and site plan. A location map and site plan drawn to scale showing property boundaries, proposed maximum acreage of all affected lands, all applicable private drinking water supplies or public drinking water sources and all existing or proposed solid waste disposal areas such as stump dumps;

3. Parcel description. A description of the parcel including size and deed description;

4. Legal interest. A copy of the lease or other document showing that the person conducting the exploration who is not the owner has a legal right to drill, or dig test pits or trenches on the property. Stumpage information does not have to be shown;

5. Information on abutters. The names and addresses of abutting property owners;

6. Signed statement. A statement signed and dated by the owner or person conducting the exploration certifying that the exploration will be operated in compliance with this article; and

7. Fees. A fee paid to the department as provided by §__.

If the department determines that a notice filed under this section is not complete, the department must notify the owner or person proposing to do the exploration no later than 45 days after receiving the notice.

§__. Performance standards for surface exploration for metallic minerals

Performance standards under this section shall be the same as in §490-Z unless otherwise indicated. Surface exploration sites shall be treated the same as quarries for the purpose of requiring compliance with performance standards.

1. Groundwater protection. To ensure adequate groundwater protection, in addition to the standards in §490-Z (3) the following setback requirements and conditions must be met for surface exploration for metallic minerals.

A. Within 30 working days after completion of exploration activities, all excavations including trenches, test pits, and mud pits shall be capped, refilled or secured.

B. Sealing of all drill holes, whether temporary or permanent, shall be completed within 30 days of cessation of drilling, sampling, or testing activities such as "down-the-hole" geophysical surveys or other similar activities. All artesian wells shall be capped or sealed within 48 hours after cessation of drilling or the onset of artesian conditions unless the

artesian flow is captured and contained in a waterproof tank and the water tested and properly disposed at a licensed treatment facility. No drill hole may be temporarily sealed for more than 3 years unless the drill hole is being used for sampling or other studies related to a mineral deposit or assessing general hydrological conditions of the area. Sealing requirements are as follows.

- (a) A drill hole that is temporarily sealed shall prevent the passage of water into or out of bedrock. The method of temporary sealing shall include:
 - (i) Plugs at the top of the bedrock;
 - (ii) Plugs at the surface opening of the drill hole; or
 - (iii) Such other methods as approved by the Department so as to reasonably prevent the passage of water into or out of the bedrock portion of the drill hole for a period of at least 3 years.
- (b) When any person conducting exploration activities determines that a drill hole need not remain open, or when a drill hole has remained temporarily sealed for more than 3 years and is not being used for sampling or other studies, the drill hole shall be sealed. Permanent sealing requirements include the following:
 - (i) The drill hole shall be permanently sealed by using concrete or neat cement to form a plug at least 10 feet in length down from the top of the bedrock surface. If the bedrock surface is so fractured or otherwise permeable that a 10 foot plug is not adequate to prevent water from entering or exiting the drill hole, then a plug of sufficient length shall be used to accomplish the desired seal.
 - (ii) The surface opening of the drill hole shall be plugged with a non-metallic permanent plug of at least 3 feet in length. The plug may be made of wood, cement, rubber or other materials approved by the Department and/or Commission.
 - (iii) As an alternative to subparagraphs B(b)(i) and (ii) above, the drill hole may be filled with a non-shrinking cement-bentonite slurry from the bottom of the hole level with the surface. Other methods may be used as approved by the Department.
 - (iv) If the owner of the land on which the drill hole is located desires to maintain the drill hole as a source of water, the owner shall notify the Department as part of the report required in subparagraph B(c) below.
 - (v) All materials, debris, and obstructions that may interfere with sealing operations shall be removed from the drill hole. Casing and other pipe shall be removed or perforated when necessary to ensure placement of an effective seal.

(c) Within 30 working days after permanent sealing of a drill hole, any person conducting exploration activities shall submit to the Department a report including, but not limited to, the following information for each drill hole:

(i) Location and identification of the drill hole;

(ii) Dimensions of the drill hole;

(iii) Identification of depth, static elevation, and estimated flow of any groundwater encountered, if known; and

(iv) Methods of sealing the drill hole, demonstrating compliance with subparagraph B(a) and (b) above.

The department may grant a variance from the provisions of §490-Z (3) paragraph C upon consultation with the person or entity that controls the public drinking water supply affected by the excavation. The department may not grant a waiver from the provisions of paragraphs A, B or D of §490-Z.

Excavation below the seasonal high water table is prohibited; however, drilling below the seasonal high water table is not prohibited. The department may grant a variance allowing excavation below the seasonal high water table if the applicant demonstrates that the yield of groundwater flow to protected waters or wetlands or public drinking water sources or private drinking water supplies will not be adversely affected by the excavation.

In the event of excavation below the seasonal high water table, the person conducting the exploration that affects by excavation activities a public drinking water source or private drinking water supply by contamination, interruption or diminution must restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. This provision is not intended to replace any independent action that a person may have whose water supply is affected by a mining activity.

2. Natural buffer strip. Existing vegetation within a natural buffer strip may not be removed except as necessary to provide access to an exploration site. If vegetation within the natural buffer strip will be removed or disturbed by the development of access roads or activities related to exploration, that vegetation must be reestablished within one year of completion of the exploration activity. The department may not grant a variance from the provisions of this subsection.

3. Protected natural resource buffers. A natural buffer strip must be maintained between the working edge of an exploration site and a river, stream, brook, great pond or coastal wetland as defined in §480-B. A natural buffer strip must also be maintained between the working edge of an exploration site and certain freshwater wetlands as defined in §480-B and have the characteristics listed in paragraph B below. Exploration activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirements under article 5-A. The width requirements for natural buffer strips are as follows.

A. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the exploration and the normal high-water line of a great pond classified as GPA, a river

flowing to a great pond classified as GPA or a segment of the Kennebec River identified in Title 12, §403, subsection 7.

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the exploration and a body of water other than as described in paragraph A, a river, stream or brook, coastal wetland or significant wildlife habitat contained within a freshwater wetland consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peat lands dominated by shrubs, sedges and sphagnum moss.

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of a floodplain wetland. If no floodplain wetlands are present, the width is measured from the normal high-water mark of the river, stream or brook. The width is measured from the normal high-water mark of a great pond and upland edge of a freshwater or coastal wetland.

The department may allow exploration to occur under this subsection as long as a permit is obtained pursuant to article 5-A.

4. Property boundary. A natural buffer strip at least 100 feet wide must be maintained between an exploration and any property boundary. This distance may be reduced to 10 feet with the written permission of the affected abutting property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. Any written permission to reduce a buffer must provide that it remains in effect until exploration ceases and must be recorded in the registry of deeds. All property boundaries within 300 feet of exploration points must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees. The department may not grant a variance from the provisions of this subsection.

5. Access ways. Access ways shall involve little or no recontouring of the land or ditching, and shall not include the permanent addition of gravel or other surfacing materials. Clearing of the vegetative cover shall be limited to the minimum necessary to allow for the movement of equipment.

6. Erosion and sedimentation control. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized.

A. Sediment may not leave the parcel or enter a protected natural resource.

B. Grubbed areas not internally drained must be stabilized.

C. Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management practices for erosion and sedimentation control.

D. All areas other than an excavation area that are not naturally internally drained must meet the erosion and sedimentation control standards of §420-C.

The department may not grant a variance from the provisions of paragraph A, B, C or D. Areas are not considered "naturally internally drained" if surface discharge is impeded through the use of structures such as detention ponds, retention ponds and undersized culverts.

7. Reclamation. The affected land must be restored to a condition that is similar to or compatible with the conditions that existed before exploration. Reclamation may be conducted in accordance with the department's best management practices for erosion and sedimentation control and must include the following.

A. Excavation faces must be treated in such a manner as to leave them in a condition that minimizes the possibility of rock falls, slope failures and collapse. An exploration face that is loose must be controlled by the use of blasting or scaling, the use of safety benches, the use of flatter slopes or reduced face heights or the use of benching near the top of the face or rounding the edge of the face.

B. A vegetative cover must be established by seeding or planting within one year of the completion of exploration. Vegetative cover must be established on all affected land except for rock excavation faces. A vegetative cover must be established on safety benches, unless otherwise approved by the department. Topsoil must be placed, seeded and mulched within 30 days of final grading. Vegetative cover is acceptable if within one year of seeding:

- (1) The planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession sufficient to ensure a 75% survival rate; and
- (2) The planting of all material results in permanent 90% ground cover.

Vegetative cover used in reclamation must consist of grasses, legumes, herbaceous or woody plants, shrubs, trees or a mixture of these.

C. All structures, once no longer in use, and all access roads and other support roads must be reclaimed.

D. Topsoil that is stripped or removed must be stockpiled for use in reclaiming disturbed land areas. The department may grant a variance from this paragraph if the applicant demonstrates that the soil is not needed for reclamation purposes.

E. The department may require a bond payable to the State with sureties satisfactory to the department or such other security as the department determines adequately secures compliance with this article, conditioned upon the faithful performance of the requirements set forth in this article. Other security may include a security deposit with the State, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the department for the reclamation of the area for which the bond was posted and any remainder returned to the operator.

F. The board may adopt or amend rules to carry out this subsection, including rules relating to operational or maintenance plans; standards for determining the reclamation period; annual revisions of those plans; limits, terms and conditions on bonds or other security; proof of financial responsibility of a person engaged in excavation activity or the affiliated person who guarantees performance; estimation of reclamation costs; reports on reclamation activities; and the manner of determining when the bond or other security may be discharged.

§__. Inspections

The department may periodically inspect a site, examine relevant records of the owner or person conducting surface metallic mineral exploration, take samples and perform tests necessary to determine compliance with the provisions of this article.

§__. Enforcement and penalties

The department shall administer and enforce the provisions of this article.

1. Stop-work order. The department may order the owner or a person conducting surface exploration for metallic minerals that is not operating in compliance with this article to cease operations until the noncompliance is corrected.

2. Penalty. A person who violates a provision of this article commits a civil violation and is subject to the penalties established under §349. Penalties assessed for enforcement actions taken by the State are payable to the State.

3. Reclamation. If, after an opportunity for a hearing, the commissioner determines that the owner of an exploration site or the person who was engaged in the exploration activity at the metallic mineral surface exploration site has violated this article, the commissioner shall direct the department staff or contractors under the supervision of the commissioner to enter on the property and carry out the necessary reclamation. The person engaged in exploration or any affiliated person who guarantees performance at the metallic mineral surface exploration site is liable for the reasonable expenses of this necessary reclamation. The commissioner may use the bond or other security paid under § ___ to meet the reasonable expenses of reclamation.

§ ___. Variances

An owner or person conducting the exploration must comply with the performance standards in § ___ unless a variance from those performance standards is approved by the department. Except when prohibited by § ___, the department may grant a variance from the performance standards in this article if the owner or person conducting the exploration affirmatively demonstrates to the department that the variance does not adversely affect natural resources or existing uses and does not adversely affect the health, safety and general welfare of the public. The department may adopt rules that set forth the standards for granting a variance from the performance standards in this article. Such rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. A variance application must include any fee applicable under §490-EE. The department shall process the variance application according to chapter 2 and the rules adopted by the department for processing an application. An applicant for a variance under this article shall hold a public informational meeting as described in those rules.

The department shall publish a timetable for responding to variance applications in the same manner prescribed in §344-B. A variance is not valid unless approved by the department and, if a municipality is the regulator, the municipality. In making its decision on a variance application, the department shall consider comments or information received and the compliance record of the owner or operator. The department shall inform the owner or person conducting the exploration of any significant concerns or issues raised.

§ _____. Municipal enforcement; registration

A municipality may register for authority to enforce this article by adopting and submitting to the commissioner an ordinance that meets but does not exceed the provisions of this article. The commissioner shall review that ordinance to determine whether that ordinance meets the provisions of this article and if the municipality has adequate resources to enforce the provisions

of this article. If the commissioner determines that the ordinance meets the provisions of this article and that the municipality has the resources to enforce this article, the commissioner shall register that municipality for authority to enforce this article. Immediately upon approval by the commissioner, primary enforcement authority for this article vests in that municipality. The commissioner may not approve an ordinance under this section unless the ordinance requires that any request for a variance from the standards in the article be approved by the commissioner before the variance is valid.

1. Relation to home rule. This section may not be construed to limit a municipality's authority under home rule to adopt ordinances regulating surface exploration for metallic minerals; however, a municipality shall not adopt an ordinance that has definitions or performance standards that are more restrictive than this chapter.

2. Optional participation. This article may not be construed to require a municipality to adopt any ordinance.

3. Suspension of approval. The commissioner may act to enforce any provision of this article or suspend the registration of a municipality if the commissioner determines that a municipal ordinance no longer conforms to the provisions of this article or that the municipality is not adequately enforcing this article. The commissioner shall notify a municipality of any such determination in writing. Suspension of municipal registration by the commissioner does not void or in any way affect a municipal ordinance or in any way limit the municipality's authority to enforce the provisions of its ordinance.

4. Appeal. A municipality may appeal to the board any decision of the commissioner under this section. Any decision by the board on appeal by a municipality constitutes final agency action.

§ ____ . Transfer of ownership or exploration control; review before expansion; fees

1. Review before expansion. Before expanding a metallic mineral exploration program beyond the area that was originally defined in the letter of intent to comply, the owner or person conducting the exploration shall notify the regulator of the intent to expand and must request an inspection. In the same manner as prescribed in §344-B, the department shall publish a timetable for responding to inspection requests and shall inspect the site within that time period to determine the exploration site's compliance with this article and other applicable laws administered by the department. The department may defer an inspection for a reasonable period when winter conditions at the site prevent the department from evaluating an expansion request. The department shall notify the owner or person conducting the exploration of a deferral under this section. Exploration activities may continue after the filing of a notice of an intent to expand. The failure of a regulator to conduct a site visit within a published time period is not a sufficient basis for a stop-work order under § ____.

At the time of filing a notification of intent to expand, the owner or person conducting the exploration shall pay any fee required by this section.

2. Transfer of ownership or exploration rights. A person who purchases a parcel of land that is operated under a notice of intent to comply, as established under § __, or who obtains authority to conduct exploration of a parcel of land under a notice of intent to comply must file within 2 weeks after the purchase or the obtaining of exploration authority a notice of intent to

comply on a form developed by the department. The new owner or person conducting the exploration may conduct exploration during this 2-week period without having filed a notice of intent to comply if the new owner or person conducting the exploration complies with all standards of this article.

3. Fees. The owner or person conducting surface exploration shall pay the regulator:

A. An initial fee of \$250 upon filing a notice of intent to comply under §__;

B. By March 1st of each year, if the exploration extends beyond a year, an annual fee of:

(1) Four hundred dollars.

C. A fee of \$250 for each variance requested under §__, except for the following:

(1) A fee of \$500 for a variance to excavate below the seasonal high water table;

(2) A fee of \$125 for a variance to waive the topsoil salvage requirement; and

(3) A fee of \$125 for a variance to waive the monitoring requirements for airblasts and ground vibration; and

D. A fee of \$250 upon filing a notice of intent to expand under this section.

Notwithstanding any other provision of this subsection, the total for all fees paid under paragraphs A and B for one exploration site in one calendar year may not exceed \$350.

All fees received under this article must be deposited in the Maine Environmental Protection Fund consistent with §353-C.

§__. Release

The department may grant a release from the requirements of this article to the owner or person conducting exploration or a transferee after reclamation of the affected area as determined by the department. The department shall inspect the site before making this determination. The release will terminate if any further metallic mineral exploration on the parcel is proposed by the owner or a person conducting the exploration or a transferee. A person proposing further exploration on the parcel must file a notice of intent to comply pursuant to §__ and comply with all requirements of this article. Payment of the annual fee under §__ will resume in the year when the further exploration begins.

